

# **ANDOVER CONSERVATION COMMISSION MEETING MINUTES**

**DECEMBER 13, 2012**

Town of Andover  
36 Bartlet Street  
3<sup>rd</sup> Floor Conference Room  
7:45pm

## **COMMITTEE MEMBERS IN ATTENDANCE:**

Vice Chairman Michael Walsh, Commissioner Fran Fink, Commissioner Alix Driscoll, Commissioner Jon Honea, Commissioner Floyd Greenwood and Commissioner Kevin Porter. Absent was Chairman Donald Cooper. Staff members present were Robert Douglas, Director of Conservation and Linda Cleary, Conservation Agent.

## **SCHEDULED ITEMS:**

### **2-4 Bancroft Road**

*Staff Recommendation: Postpone to Future Date*

Discussion regarding RAO filed with DEP and Enforcement Order issued by the Conservation Commission.

Mr. Douglas advised the Commission to retain all handouts received for a future discussion. The Commission will reschedule for a meeting in January, 2013 and advise all parties.

### **Mass DOT-Highway Division**

#### **Route 93NB at River Road**

#### **Present in Interest: Andrea Norton**

*Staff Recommendation: Approve*

Public Meeting on the Request for Determination of Applicability filed by Mass DOT-Highway Division to determine if the proposed Slope Stabilization Maintenance Work Project located on a section of Route 93 NB at the River Road Exchange is subject to the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, section 40.

Mr. Douglas presented this to the Commission. This is a roadside area that has begun to slough off and undermine the roadway.

Andrea Norton presented the project to the Commission. During routine maintenance 3 different areas of “wash outs” were discovered on the off ramp from Route 93 Northbound to the River Road Interchange. This will be routine maintenance to stabilize the areas to prevent further erosion to the ramp. The project will reestablish the slope and bring it back to grade and filter fabric and riprap will be installed to stabilize the area.

Commissioner Fink noted the water is concentrating in a lower area. The water should be going into the pretreatment marsh and catch basins shown on the plan and not running down the slope. The resurfacing

process over the years has increased the height of the ramp and the berm is gradually being lost. Some of the granite edging will be removed and replaced to help ease the runoff. Commissioner Fink also questioned the lack of the use of loam and seed and only riprap. Mr. Douglas stated that riprap would keep it from eroding better than loam and seed. This is the standard way to treat eroded areas with filter fabric and riprap as it works better than loam and seed in case it doesn't take.

Vice Chairman Walsh asked for a Motion. Commissioner Driscoll made a Motion to Approve with the added condition that the curbs and berms be raised to direct the runoff towards the catch basins and not the eroded areas, it was seconded by Commissioner Honea and unanimously approved.

### **6 Miles Circle**

**Present in Interest: Carol O'Connor, Gary Wenzel and Jeff Fiedler**

*Staff Recommendation: Approve as Neg.3.*

Public Meeting on the Request for Determination of Applicability filed to determine if the proposed replacement of an existing 8'x9' enclosed area with a 12'x13' sunroom is subject to the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, section 40.

Agent Cleary presented this to the Commission. The Application is filed under the WPA only. The Applicant will be submitting a Request for Waivers for plan requirements, as the Town wetland maps are inaccurate. An updated plan was submitted to the Commission. This is a Backyard Project updating existing conditions by replacing the 3 season room with a sun porch. The work is within the Riverfront, however the construction is on the 2<sup>nd</sup> level, not ground level, and is replacing almost in kind what currently exists. The only earth disturbance is for the 4 additional required sona tubes to be placed further away from the resource area than what currently exists which will be hand dug.

Jeff Fiedler addressed the Commission. He explained the construction of the sunroom to the Commission and stated he has full control over the project from start to finish. No machinery will be involved during the project.

Vice Chairman Walsh asked for a Motion. Commissioner Honea made a Motion to Approve the Waiver Request, it was seconded by Commission Driscoll and unanimously approved. Commissioner Honea made a Motion to Approve as Neg.3, it was seconded by Commissioner Driscoll and unanimously approved.

### **67 Chestnut Street**

*Staff Recommendation: Continue to January 3, 2013.*

Public Meeting on the Request for Determination of Applicability filed to determine if the proposed installation of an 8'x8' concrete pad is subject to the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, Section 40.

Mr. Douglas presented this to the Commission. The Applicant has requested a continuance to January 3, 2013.

Vice Chairman Walsh asked for a Motion. Commissioner Honea made a Motion to continue to January 3, 2013, it was seconded by Commissioner Driscoll and unanimously approved.

## **221 Highland Road**

**Present in Interest: Bill Walsh, Sean Brosdan, Andrew Bernan, Stuart Melnitsky**

*Staff Recommendation: Review of Notice of Intent which was submitted in reponse to the 2<sup>nd</sup> Enforcement Order. 2<sup>nd</sup> Issue for discussion after decision on the Notice of Intent is a continuing vilation.*

Continued Public Hearing on a Notice of Intent filed to under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, Section 40 and/or the Andover Wetlands Protection By-Law, Article XIV, for the proposed removal of invasive plant species, tree stumps and machine parts, including restoring jurisdictional filled area, replace of wooden sheds and fencing.

Agent Cleary presented this to the Commission. This was continued from August 21, 2012 for purposes of a site visit on September 8, 2012 and for submittal and plan requirements to be met by Applicant.

The following items have **not** been submitted:

1. Removal of invasive vegetation including means and methodology by a professional;
2. 25 foot non-disturb bounds to be depicted on the A and B series flagging;
3. Shrub plantings to be depicted on plan per Seekamp's restoration plan;
4. Vegetation to be removed is depicted on plan but definitive boundaries and means and methodology are not;
5. Erosion controls are missing from plan;
6. Commission appointed Site Monitor;
7. Use of bark mulch not permitted to prevent erosion.

Filing under both the WPA and By-law, as such the by-law fees have not been submitted. The fees total \$730.00 and must be received one week prior to date of continuance.

Robert Murphy addressed the fee issue with the Commission. The initial filing consisted of the fees required by the Conservation Commission for the proposed work. If there are additional fees, the Applicant was not aware of them at the time. Staff agreed to check the building permit on file. With respect to the items missing from the plan, the area has begun to revegetate with native plants. A new plan was filed with the Notice of Intent showing what the Applicant felt was reasonable for the site. The Applicant will comply with the additional planting requirements if necessary. The Applicant has planted fruit trees and other plantings already. Erosion controls are shown on the submitted plan along the driveway, where the Applicant deemed them necessary. There is no development proposed on the site other than the driveway and the plantings. The vegetated areas are stabilized with natural vegetation at this time, so there is no need for further erosion control. Mr. Murphy agreed to speak with the Applicant regarding the additional fees and missing items.

Commissioner Fink questioned if the plantings would be done by hand or machinery. Mr. Murphy indicated all plantings would be done by hand to maintain the stabilization which has begun.

Commissioner Greenwood questioned the lack of plantings with staff. Staff agrees with the Seekamp restoration plan as the minimum planting requirements.

Sean Brosdan questioned if permits were filed correctly prior to any work being done. The Commission confirmed that this is a filing for “after the fact” approval for work already done.

Staff indicated that Markus Pinney would be the Site Monitor due to the fact that the Applicant indicated on the submitted plan that they would be monitoring the site.

The second Enforcement Order directed the Applicant to plant 1 tree every 20 feet to replicate the trees which were cut. This demand was made based on observations and stump count during the site visit. The trees were recently cut in violation of the Wetland Regulations without a permit. The Applicant believes she was not given the opportunity to discuss the terms of the Enforcement Order or submit a revised plan in response to the Enforcement Order showing additional plantings. The Applicant filed the Notice of Intent not to follow the Enforcement Order, but to open the discussion for restoration.

Mr. Murphy requested a continuation to provide the missing items discussed. He also requested a list of missing items and additional fees required.

Vice Chairman Walsh asked for a Motion. Commissioner Porter made a Motion to continue to a date uncertain, it was seconded by Commissioner Driscoll and unanimously approved.

### **Enforcement Order**

There is an encroachment into the A series flagging of the BVW, which is a continuing violation. There is a stock piling of wood in the flagged areas and trees felled on site. This was observed on site visit December 6, 2012. Commission to consider a 3<sup>rd</sup> Enforcement Order.

Bill Walsh asked if a Cease and Desist is in effect until the Commission grants permission for the Applicant to continue work. The Commission confirmed that is correct as long as the Enforcement Order is in effect.

Mr. Murphy explained that the felled tree was a result of Hurricane Sandy and was being cut to use as firewood to heat their house. There was no construction work being done on site. The Applicant did not believe the Enforcement Order applied to this work.

Commissioner Fink agreed that if the firewood was placed in the wetland, it should be moved out of that area.

Commission Driscoll confirmed that many trees had been cut and stockpiled in the wetland area, not just one tree.

Vice Chairman Walsh reiterated that there should be no work taking place on this site without first consulting with an Agent until the issues in the Enforcement Order have been resolved.

Vice Chairman Walsh asked for a Motion. Commissioner Fink made a Motion to issue the Enforcement Order requiring the removal of the stock piling of material from the wetland and moved at least 50 feet away from the wetland as shown on the plan provided no later than December 31, 2012, it was seconded by Commissioner Driscoll and unanimously approved.

### **CONSENT AGENDA:**

#### **3000 Minuteman Road**

Issuance of a Satisfactory Certificate of Work Certificate.

#### **39 Lucerne Drive**

Issuance of a Certificate of Compliance.

#### **Minutes**

Approval of Minutes from November 20, 2012 and Executive Minutes from November 20, 2012.

Commissioner Honea made a Motion to Approve the Consent Agenda, it was seconded by Commissioner Driscoll and unanimously approved.

### **INFORMATIONAL ITEMS THAT MAY REQUIRE A VOTE:**

#### **Control of Aquatic Nuisance Vegetation in Foster's Pond**

**Present in Interest: Steven Cooper and Mike Lenon**

Request for a three year Extension of Order of Conditions and amend the Order of Conditions to reflect alternative lake management treatments. This is an ongoing process to combat the invasive vegetation in Foster's Pond. The proposal is a three year template for the overall management program which includes the use of "Clipper" to treat fanwort. "Clipper" is a new herbicide with EPA approval and pending MA approval which is nontoxic to other aquatic life. Mike Lenon from ACT provided the Commission with the chemical information and recommended treatment plan for "Clipper". This will allow treatment of smaller areas of fanwort as opposed to waiting until it becomes a much larger area.

Amy Janovski added that an active outreach to the public would lessen the need to use chemicals in the Pond. Parents need to educate their children not to release turtles and fish into the Pond.

Commissioner Driscoll made a Motion to Approve the Extension, it was seconded by Commissioner Honea and unanimously approved.

#### **278R High Plain Road**

**Present in Interest: Don Durant and Lesley Durant**

Don Durant provided an update on the Land Swap Proposal to the Commission. The Plan has been updated and approved by the Planning Department and the IDR is complete. The Land Swap is now set

to be added to the Town Warrant. Mr. Durant is conveying a larger parcel than he is receiving back from the Commission. There remains a concern if the parcels to be swapped are of equal value. Mr. Durant has contracted an Appraiser to provide a Appraisal of both properties by early January, 2013. Until the Appraisal is received and reviewed the Commission cannot approve the Land Swap.

The discussion was continued to January 3, 2013 for a further update on the Appraisal.

### **SunGen Solar Project**

**Present in Interest: Mark Johnson, Kathryn Morin, John Hess, Dean Holt and Duncan Wood**

Discussion regarding conveyance of Lot B off South Street to the Conservation Commission. This project was permitted two years ago and a portion of the land set aside to be conveyed to AVIS to protect habitat, etc, is now being offered to the Conservation Commission. Attorney Johnson provided the history of the site to the Commission. Natural Heritage plan requires the Open Space be conveyed or a Conservation Restriction be placed on the property. The Proponent cannot come to terms with AVIS and would now like to convey the Open Space to the Town.

Vice Chairman Walsh stated the steps the Town must take before any action can happen on this property:

1. Determine if the Conservation Commission is interested in the property;
2. Environmentally “friendly”, clean from prior uses, environmental issues with Natural Heritage;
3. Title Exam to be conducted by Town Counsel

The concerns expressed by the Commission are the access to the area and requirements of Natural Heritage. The environmental report has been reviewed by an independent scientists working for the Town.

Commissioner Honea asked if there were any time constraints on the conveyance and if this needs to go to Town Meeting. The Town and Conservation Commission can receive this parcel as a gift without going to Town Meeting.

Commissioner Greenwood inquired as to the Town’s obligations under the Habitat Management Plan. The Applicant will be responsible for any work to be done. \$10,000.00 will be placed in an escrow account for maintenance under the Habitat Management Program. This will accrue interest for roughly 20 years then the Town can use these funds for maintenance. There is no access to the land for maintenance without accessing land owned by National Grid. SunGen cannot convey rights for access until the project is decommissioned. SunGen has easement rights from National Grid, but cannot convey those easement rights. The property can be accessed by the Merrimack River or from the Sanborn Reservation.

Attorney Johnson provided a large scale plan for the Commission to view the parcel and any possible access routes. There is a 15 foot access along the rows of panels. After decommissioning access could be made from South Street.

There is an easement from National Grid, which would allow access to the property with National Grid’s permission.

**Commission needs to confirm direct land access is available. Clarification of obligations under Natural Heritage Plan.**

Commissioner Driscoll asked if the Comprehensive Management Plan was available to be reviewed by the Commission. There was no definitive answer provided by Attorney Johnson.

Commissioner Fink inquired if the ownership of Lot B was subject to the long term management plan, who would perform the initial management duties and who would perform the long term management duties. The Applicant, SunGen, will provide the management duties until the project is decommissioned in 20-30 years. The money put in the escrow account would be used for management once the project is decommissioned.

Commissioner Porter requested a site visit. There is evidence of a dirt motor bike track on the property and once fenced off and panels installed, he is concerned that the motor bikes will move onto Conservation Land. There will be signage for Natural Heritage and fencing installed.

Matt Dallard addressed the Commission. He agreed that this parcel is potentially an important piece of land along the Shawsheen River for the future. He advised that SunGen will not grant access to the land for 30 years and that the Commission should look closely at the access being offered for habitat management. Mr. Dallard also suggested the Commission negotiate now for rights for public access when the project is decommissioned now.

Commissioner Fink requested a copy of the 21E Assessment which was provided by Duncan Wood at the meeting. She also requested a site visit to view the access to the property as soon as possible. Commissioner Fink also requested a Site Plan clarifying the land being conveyed. Commissioner Driscoll recommended access to the endangered species sooner rather than later.

Commissioner Honea inquired as to why AVIS declined to accept the property. AVIS is willing to move forward with the purchase, but was not satisfied with the Phase I Survey and asked for further environmental surveys to be done which SunGen refused to provide.

Duncan Wood explained that the Phase I survey is produced using all available state and federal records on the site. There is a review of the Town records as well as the historical use of the site. A site walk is also done to view the site to determine if there are any visually recognized environmental issues. A search is done for any "recognizable environmental issue of record". There were two small sites that may have been issues during the walk around. There were two rusted drums found on site. An investigation was done as to where the drums came from as well as the existing conditions. DEP responded to a call regarding the abandoned drums to the Andover PD in October 1988. DEP had no records of the drums and no evidence of a release from the drums. There was no evidence of oil and gasoline spilling from the dirt bikes.

Vice Chairman Walsh took a straw poll and it was unanimous to ask Town Counsel to move forward with his investigation on this property.

Continued to January 3, 2013 for an update from Town Counsel.

### **Vale/Shawsheen River AVIS Reservation**

**Present in Interest: Amy Janovsky**

Commissioner Greenwood recused himself from this discussion. Amy Janovski provided the Commission with a map of the Invasive Areas labeled to be treated under the grant. This is an accelerated proposal for the removal of nuisance plants and improve wildlife habitat at the Vale/Shawsheen River

AVIS Reservation. Work to be done according to state regulations in an environmentally friendly manner. The work must be completed by June 30, 2013.

Amy addressed the Commission regarding the proposal. This Grant is only available through the LIP Program and may be the last available for the foreseeable future. Most of the work is upland as shown on the map provided. Amy would like to come up with the best way to target invasives other than randomly attacking them. She would like to teach volunteers, etc., the “cut and dab” approach with minimal spraying for use along the River Bank, using a phased approach with a professional teaching the volunteers the correct process. There are a few upland areas that are thickets of invasives that will need to be sprayed. Fish and Wildlife Division agree with this approach and are happy that the areas are contiguous with Conservation Land.

Commissioner Fink would like an official application be filed due to the wetlands, bank and riverfront areas where work is being proposed.

Mr. Douglas advised the Commission that this work is exempt under the WPA and is no different than many Eagle Scout projects that the Commission approves every year. He recommended not requiring a permit and proceed as filed.

Commissioner Honea made a Motion to Approve with staff supervision, it was seconded by Commissioner Porter and approved with Commissioner Driscoll abstaining.

## **2 Possum Hollow Road**

### **Present in Interest: Adam Guziejka and Buddy Watson**

An Enforcement Order was issued on this property at the last meeting. 400 yards of fill was brought in to level the grading and removed some hazardous trees and replanting of some trees. We have asked them to install a silt fence, delineate the wetland and provide a stump count. The Violator is asking for guidance from the Commission. The Violator has hired someone to delineate the wetland. Commissioner Fink requested a surveyed site plan with the delineation of the wetland, topography of filled and nonfilled areas and regrading of the side edge and back edge. The side edge is already beginning to erode. The Commission needs to know the pre-existing wetland and buffer area as most of the work was done within the buffer. The Commission needs a plan to determine what they are working with to determine what the Violator needs to do.

The homeowner was responsible for obtaining the permits needed for the project and is now out of the country.

Staff recommendation is to keep the Enforcement Order in place and have wetland delineated as most of the work was in the buffer zone then we can provide the homeowner with what we recommend for restoration.

Produce an engineered plan showing the delineation of the wetlands and the existing conditions and grading, visible stumps and contours of the site. Trees replanted should also be shown on the plan.

## **69 North Street**

Ratification of an Enforcement Order to be issued for nonpayment of inspection fees.



Commissioner Honea made a Motion to Ratify the Enforcement Order, it was seconded by Commissioner Greenwood and unanimously approved.

**The next meeting will be held at 7:45pm on January 3, 2013.**

**The meeting was adjourned at 10:35pm by Motion of Commissioner Driscoll, seconded by Commissioner Greenwood and unanimously approved.**

Respectfully submitted by,

Lynn Viselli,  
Recording Secretary